

1 THE HONORABLE BENJAMIN H. SETTLE
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7 IN THE UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 BUNKER HOLDINGS LTD.,

11 Plaintiff,

12 v.

13 M/V YM SUCCESS (IMO 9294800), her tackle,
14 boilers, apparel, furniture, engines, appurtenances,
15 etc., *in rem*,

16 Defendant.

17 IN ADMIRALTY

18 CASE NO.: 3:14-cv-06002-BHS

19 **EX PARTE MOTION FOR
20 APPROVAL OF SUBSTITUTE
21 SECURITY AND RELEASE OF
22 VESSEL**

23 **NOTE ON MOTION CALENDAR:**
December 30, 2014

24 COMES NOW Plaintiff, BUNKER HOLDINGS LTD. (hereinafter “BUNKER
25 HOLDINGS” or “Plaintiff”), by and through undersigned counsel, and moves for an Order
26 approving substitute security and releasing the M/V YM SUCCESS (hereinafter the “Vessel”) from arrest. As grounds for this motion, Plaintiff states the following:

1. Counsel for the Vessel’s Owners, Yang Ming Liberia Corp., has provided substitute security to stand in place of the M/V YM SUCCESS and serve as security for Plaintiff’s *in rem* claims against the vessel pursuant to Rule E(5)(a) of the Supplemental Admiralty Rules. *See* Rule E(5)(a).

2. Specifically, the parties have agreed to substitute security in the form of an acceptable Letter of Undertaking (“LOU”) in the amount of USD 2,400,000 to secure claims *in rem* against the said vessel, supplied to counsel for Plaintiff, which the parties agree may be

1 substitute *res* in lieu of the *in rem* arrest of the vessel. See *Petroleos Mexicanos Refinacion v.*
 2 *M/T King A*, 554 F.3d 99, 105 (3d Cir. 2009) (“[A]s a substitute for the *res*, [the LOU] ha[s]
 3 the effect of transferring the maritime lien from the vessel to the security fund.”); *Betty K*
 4 *Agencies, Ltd. v. M/V MONADA*, 432 F.3d 1333, 1341 (11th Cir. 2005) (noting the substitute
 5 security “becomes substitute for the property.”) (internal citations omitted); *see also*
 6 *Mackensworth v. S.S. AMERICAN MERCHANT*, 28 F.3d 246, 252 (2d Cir. 1994) (Holding
 7 that the LOU was posted pursuant to Supplemental Rule E(5)(a) and “[i]n accordance with
 8 generally accepted practice, this Letter of Undertaking became the substitute *res* for the value
 9 of [Plaintiff’s *in rem*] claim”) (citing *Alyeska Pipeline Serv. Co. v. The Vessel Bay Ridge*, 703
 10 F.2d 381, 384 (9th Cir. 1983), *cert. dismissed*, 467 U.S. 1247 (1984) (“A plaintiff’s lien for the
 11 claims alleged against the vessel is transferred to the security posted.”); *Gabarick v. Laurin*
 12 *Mar. Am., Inc.*, 2014 U.S. Dist. LEXIS 135248, *298–299 (E.D. La. 2014)
 13 (“...the LOU operates as a substitute *res*, in place of the vessel, against which the Court’s
 14 judgment is enforceable to the same extent that it would be were the vessel actually in the
 15 custody of the Court or a designated trustee.”)

16 3. As the parties have stipulated and agreed to substitute security in accordance
 17 with the provisions of Supplemental Rule E(5)(a), it is respectfully requested that the Court
 18 approve the security provided to counsel for Plaintiff in lieu of continuation of arrest of the
 19 vessel and that the U.S. Marshal be directed to release the arrested property, the M/V YM
 20 SUCCESS, without delay.

21 4. Finally, undersigned counsel confirms that the fees for the United States
 22 Marshal have been provided¹, and that there are no other parties that have appeared in this
 23 action. Therefore, the vessel may immediately be released from arrest. A form of proposed
 24 Order is submitted with this Motion.

25 26 ¹ The U.S. Marshal has advised that it has not yet been invoiced for the services provided relating to the
 arrest, but confirms that Bunker Holdings provided the required deposit. Once invoiced, the U.S.
 Marshal fees will be deducted from this deposit.

DATED this 30th day of December, 2014.

Of counsel:

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/s/ Jeremy B. Jones

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